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## MEMORANDUM

TO: Kansas County Appraisers

FROM: Lynn Kent, Personal Property Section Mgr.

DATE: September 7, 2022

SUBJECT: ATV-UTV-ROV Farm Exemption per K.S.A. 79-201j(a)

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There have been questions from county appraisers surrounding recent Kansas Board of Tax Appeals (BOTA) rulings on the exemption of all-terrain vehicles (ATV), utility vehicles (UTV), and recreational off-highway vehicles (ROV) when used “actually and regularly” in a farming or ranching operation as prescribed in K.S.A. 79-201j(a).

K.S.A. 79-201j(a) exempts farm machinery and equipment that is “actually and regularly” used in any farming or ranching operation. It further defines the term “farming or ranching operation” to include feedlot operations, farm or ranch work for hire, and the planting, cultivating, and harvesting of nursery and/or greenhouse products for sale or resale. The statute also specifically identifies and excludes any passenger vehicle, truck, truck tractor, trailer, semitrailer, or pole trailer, other than farm trailer, as they are defined in K.S.A.8-126. The filing requirement with BOTA for exemption under K.S.A. 79-201j is a listed exception under K.S.A. 79-213(1), and the county appraiser has the authority to approve the exemption without a BOTA order if it is his/her opinion that an item clearly qualifies for exemption.

Property Valuation Division (PVD) has addressed similar concerns in the past with the Valuing Micro Utility Truck (MUT) and Work Site Utility Vehicles Memo dated August 22, 2008, and the Exemption of Farm Machinery and Equipment (K.S.A. 79-201j(a)) Memo dated April 21, 2017. However, because of the many changes and increasing uses of ATV, UTV, and ROV vehicles, in addition to the above mentioned BOTA rulings, it is important to again examine this topic and provide further guidance for consistency among counties.

Vehicle descriptions of interest for this memo are defined in K.S.A. 8-126. They are:

(a) "All-terrain vehicle" means any motorized nonhighway vehicle 55 inches or less in width measured from the outside of one tire rim to the outside of the other tire rim, having a dry weight of 1,500 pounds or less, traveling on three or more nonhighway tires.

(v) "Motor vehicle" means every vehicle, other than a motorized bicycle or a motorized wheelchair, that is self-propelled.

- (ee) "Passenger vehicle" means every motor vehicle, as defined in this section, that is designed primarily to carry 10 or fewer passengers and is not used as a truck.
- (hh) "Recreational off-highway vehicle" means any motor vehicle not greater than 75 inches in width measured from the outside of one tire rim to the outside of the other tire rim, having a dry weight of 3,500 pounds or less, traveling on four or more nonhighway tires.
- (oo) "Truck" means a motor vehicle that is used for the transportation or delivery of freight and merchandise or more than 10 passengers.
- (rr) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting electric personal assistive mobility devices or devices moved by human power or used exclusively upon stationary rails or tracks.
- (tt) "Work-site utility vehicle" means any motor vehicle that is not less than 48 inches in width, has an unladen weight, including fuel and fluids, of more than 800 pounds and is equipped with four or more nonhighway tires, a steering wheel and bench or bucket-type seating allowing at least two people to sit side-by-side, and may be equipped with a bed or cargo box for hauling materials. "Work-site utility vehicle" does not include a micro utility truck or recreational off-highway vehicle.

It is important to note that Kansas appellate courts have interpreted versions of K.S.A. 79-201j(a) and have consistently ruled that "actual use" of the vehicle is the controlling factor. The Kansas Supreme Court ruled on the farm use exemption status in the case of *In re Lietz Const. Co.*, 273 Kan. 890 (2002) with the decision that use of the vehicles or trucks would dominate over an overtly technical definition. Similar logic would also be utilized by the Court of Appeals in the case *Matter of Reeve Cattle Co., Inc.*, 53 Kan.App.2d 781 (2017). The Court affirmed a BOTA decision that focused on the vehicle's actual use and granted the K.S.A. 79-201j(a) farm equipment exemption.

In addition to the appellate courts' conclusion that "actual use" of the vehicle is the ruling criteria, it appears BOTA, as they have in past decisions, continues to recognize the difference among vehicle definitions as a secondary measure when considering the K.S.A. 79-201j(a) exemption. Although not every order acknowledges the difference, many BOTA rulings clearly point out those ROV vehicles identifying more closely to passenger vehicles than work vehicles. And, even though ATV's, UTV's and ROV's are regularly crossing lines for work and recreational activities and often being lumped together as the same type of vehicles, they are not identical as noted above per K.S.A. 8-126. Thus, it appears when being considered for the farm exemption the answers are in the "actual use" and the definition of the vehicle as ATV, UTV, and ROV.

An ATV vehicle, defined in K.S.A. 8-126(a), proven to be used solely in a farming or ranching operation is typically exempted by the county appraiser per K.S.A. 79-213(l). The questions about exemption mainly stem from the ATV being used additionally for recreational purposes. The term "actually and regularly", although not defined in K.S.A. 79-201j(a), is not the same as "exclusively", thus it does allow for other use. The appraiser must discern if the ATV qualifies as actually and regularly used in a farming and ranching operation even if it is occasionally being used for recreational purposes. If the county appraiser has doubts whether the ATV qualifies for exemption, it should be assigned to the tax roll and the appraiser should assist the taxpayer in applying to BOTA for consideration as instructed in PVD Directive #92-025. BOTA has consistently ruled in favor of ATVs shown to qualify for the exemption as used in a farming or ranching operation. Common ATV brands include Polaris, Can-Am, Yamaha, Honda, Suzuki, and Kawasaki.



Like the ATV, the appraiser must also determine if the UTV qualifies as actually and regularly used in a farming and ranching operation. It too, may be operated occasionally for recreational purposes. Thus, if the county appraiser has doubts whether the UTV qualifies for exemption, it should be assigned to the tax roll and the appraiser should assist the taxpayer in applying to BOTA for consideration. Historic BOTA rulings exempt UTV vehicles that qualify as work-site utility vehicles per K.S.A. 8-126(tt) when used actually and regularly in a farming or ranching operation. Common UTV's identified in this group are John Deere Gators, Kawasaki Mules, Polaris Rangers, and Yamaha Rhinos.





Conversely, in recent years, BOTA decisions denying the farm and equipment exemption on the same types of vehicles have prompted questions from county appraisers. Yet, when examining the individual BOTA orders, the evidence, or lack of, caused the denial rather than the vehicle and its use. For example:

- BOTA denied an exemption for a 2019 Honda Pioneer 1000-5. The order indicated “the evidence was not adequate to show the subject property would qualify for exemption.”
- A similar situation occurred where BOTA stated “the applicant has not presented evidence sufficient to satisfy the statutory requirements of K.S.A. 79-201j(a)”, and upon request for clarification, BOTA noted it had an “illegible title” for a 2019 Polaris Ranger XP 1000 Crew.
- Another comparable case resulted in a denial from BOTA for a 2021 Polaris General XP 4 1000 Deluxe. In this case BOTA agreed the vehicle was actually and regularly used for farming and ranching but ruled the vehicle to be a “passenger vehicle”, in addition to, finding the title “illegible”. BOTA denied exemption noting they could not grant it “without a legible title showing ownership and date of acquisition.”

Although all may have qualified, the taxpayer did not supply proper evidence for BOTA to exempt.



Additional BOTA decisions, however, support the historic view of UTV vehicles, identifying as work-site utility vehicles per K.S.A. 8-126(tt), being used actually and regularly in a farming or ranching operation as exempt.

- A 2021 BOTA decision granted exemption to a 2020 Polaris Ranger used daily to feed cows and check fence as “farm machinery and equipment that is actually and regularly used in a farming or ranching operation.”
- Comparably, a 2020 Kawasaki Mule received exemption based on a 2021 ruling by BOTA stating “the subject property is farm machinery and equipment” based on its actual and regular use “for daily chores and to clean brooders.”

- BOTA also ruled “based on the record evidence and the County’s verified affirmed recommendation” that a 2021 Polaris Ranger Crew 1000 Premium used actually and regularly to “spray chemicals, haul feed, check livestock, and clean pasture” qualified for the exemption.

Thus, it appears if the taxpayer provides sufficient information to support farm use with this type of UTV, BOTA continues to consider it exempt. It should be noted the definition of work-site utility vehicles includes “seating allowing at least two people to sit side-by-side and may be equipped with a bed or cargo box for hauling materials.”



The ROV has been the culprit in most questionable cases applying for the farm exemption under K.S.A. 79-201j(a). Many ROV vehicles, as defined in K.S.A. 8-126(hh), are manufactured for recreational rather than utility purposes and typically carry two to four passengers with no sizable bed or cargo box for hauling materials. Although the county appraiser has the authority to decide if the ROV qualifies for the exemption per K.S.A. 79-213(l), some waive that choice because of the predominant intended use of an ROV, and they forward the exemption application to BOTA.

Results issued by BOTA over the past year have varied depending on the ROV in question. The majority of outcomes were denied a farm exemption under K.S.A. 79-201j(a) because BOTA deemed the ROV more closely related to a passenger vehicle than utility vehicle.

- Two recent cases were denied exemption even though BOTA acknowledged there was no question that each ROV was actually and regularly used for farming and ranching purposes. BOTA held the ROV’s, a 2015 Polaris RZR 1000 XP and a 2015 Polaris RZR S 900 EPS, were “passenger vehicles” as defined in K.S.A. 8-126 (ee); furthermore, passenger vehicles are specifically identified and excluded from exemption per K.S.A. 79-201j(a).
- A request was denied for a 2021 Polaris RZR XP 4 1000. The taxpayer explained that 75% usage was for farm and ranch while 25% usage was personal, which is acceptable for the exemption. Yet, this ROV is located at the taxpayer’s city residence and is listed for city street use, thus, BOTA ruled this ROV as a passenger vehicle.

To reiterate, many ROV vehicles appear to be designed primarily for recreational use, and they lack a notable bed or cargo space for hauling, further highlighting the idea they were not designed for work and should likely not qualify for exemption.



In summary, the questions raised from recent BOTA rulings on the exemption of all-terrain, utility, and recreational off-highway vehicles when used “actually and regularly” in a farming or ranching operation as prescribed in K.S.A. 79-201j(a) can be explained by each individual BOTA order. Once examined, it appears that BOTA acknowledges not only the “actual use” of the vehicle as the controlling factor, which has been upheld by appellate courts, but they also recognize a difference among vehicle definitions per K.S.A. 8-126.

A main distinction appears to be amid vehicles identifying more closely to passenger vehicles than work vehicles. ATV’s, UTV’s and ROV’s have clear and separate definitions although popularity and development over time has meshed many of these vehicles’ attributes. It is important to identify each exemption request and consider the vehicle’s likeness to the definitions in K.S.A. 8-126, in addition to, its actual and regular use. Establishing whether a vehicle more closely identifies as an ATV, UTV, or ROV will likely assist in and possibly clarify for the appraiser whether it qualifies for the farm exemption per K.S.A. 79-201j(a). BOTA seems to be consistent ruling on these vehicles over the years.

Most ATV’s appear to qualify for exemption if actual and regular farm use is proven. Additionally, UTV vehicles, identifying as work-site vehicles equipped with a bed or cargo box for hauling materials, seem to be granted exemption as well. The ROV’s are still somewhat questionable since some UTV type vehicles are now larger and partially fit the ROV description. However, it appears BOTA considers those vehicles that most resemble a recreational off-highway vehicle with no apparent utility/work ability to be passenger vehicles and do not qualify for exemption.

Finally, if the county appraiser has doubts whether the ATV, UTV, or ROV qualifies for exemption, it should be assigned to the tax roll and the appraiser should assist the taxpayer in applying to BOTA for consideration as instructed in PVD Directive #92-025.